

FILED
BILLINGS DIV.

2008 OCT 24 AM 11 43

IN THE UNITED STATES DISTRICT COURT

PATRICK E. DUFEM, CLERK

BY

DEPUTY CLERK

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

JOEL MILES WHITE,

Petitioner,

vs.

**SAM LAW, Warden of Crossroads
Correctional Center, et al.,**

Respondents.

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CV-08-81-BLG-RFC

**ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE**

On September 30, 2008, United States Magistrate Judge Carolyn Ostby entered her Findings and Recommendation (*Doc. 6*) with respect to White's 28 U.S.C. § 2254 petition for writ of habeas corpus (*Doc. 1*). Although Magistrate Judge Ostby believes the petition may be procedurally barred, she found it more efficient to address it on its merits. In the end, Magistrate Judge Ostby concludes that White's disagreement with the jury's evaluation of the evidence admitted at his trial does not mean he is in custody in violation of federal law. For that reason, Magistrate Judge Ostby recommends that White's petition for federal habeas relief be denied.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1)¹. In this matter, White filed an objection on October 20, 2008. *Doc. 7*. White's objections require this Court to make a *de novo*

¹In prisoner cases, this Court extends the time to object to twenty days in order to take into account the Supreme Court's ruling in *Houston v. Lack*, 487 U.S. 266, 270-71 (1988), and the somewhat greater mailing time that is involved in sending documents into and out of a prison facility.

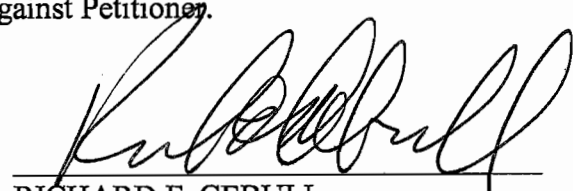
determination of those portions of the Findings and Recommendations to which objection is made. 28 U.S.C. § 636(b)(1).

White's objections merely reiterate what he said in his petition—that the jury was wrong in finding that the killing of Gary Temple in self-defense. There is no allegation that the jury's verdict rested on an error in federal law. Accordingly, after a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and adopts them in their entirety.

IT IS HEREBY ORDERED that White's Petition (*Doc. 1*) is **DENIED**. There being no basis for a reasonable jurist to conclude White is entitled to relief, a certificate of appealability is **DENIED**.

The Clerk of Court shall notify the parties of the entry of this Order and enter judgment by separate document in favor of Respondent and against Petitioner.

DATED this 24th day of October, 2008.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE